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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,892	05/31/2001	Shawn M. Wheeland	15500.1	1008

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EXAMINER

STIMPAK, JOHNNA

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/870,892

Applicant(s)

WHEELAND, SHAWN M.

Examiner

Johnna R Stimpak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The following is a first office action upon examination of application number 09/870,892.

Claims 1-28 are pending and have been examined on the merits discussed below.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 3, 4, 13, 14 and 26** are rejected under 35 USC 112, first paragraph, as containing subject matter which was not described in the specification in a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

More specifically, the Examiner asserts that one of ordinary skill in the art could not make and or use Applicant's invention without undue experimentation. There is no proof that the visual presentation will evoke wistful regret in prospective representatives or provide hope to prospective representatives. Applicant provides brief descriptions of examples to try to explain how the system evokes regret or provides hope such as reminding representatives of broken promises they may have made to their children or reminding them they may not have spent enough time with family members, however, there is no evidence that these suggestions will evoke any such emotion in the prospective representative. Further, the examples of providing hope such as the way the business opportunity can change their life financially do not necessarily provide hope in the prospective representative. There is no evidence that the visual presentation

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will evoke the emotional responses claimed, or provide hope to the prospective representative, thereby rendering it virtually impossible for one of ordinary skill to make and or use Applicant's invention without undue experimentation.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 3, 4, 13, 14 and 26** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. . There is no proof that the visual presentation will evoke wistful regret in prospective representatives or provide hope to prospective representatives. Further explanation is required.

5. **Claim 17** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the terms sufficient and insufficient is vague. There is no explanation of what constitutes a sufficient interest and what constitutes insufficient interest.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 3, 4, 13, 14 and 26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to an abstract idea

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without a practical application that produces a “useful, concrete and tangible” result. This is one of the requirements to be met in order to pass muster under 35 USC 101. See *In re Allapat*, 31 USPQ2d 1545, 1558 (Fed. Cir. 1994); *State Street Bank and Trust Co. v. Signature Financial Group, Inc.*, 47 USPQ 2d 1596, 1601-02 (Fed. Cir. 1998). More specifically, claims 3, 4, 13, 14 and 26 fail to produce a concrete result because there is no proof that the visual presentation will evoke the emotions of regret and hope within the prospective representative.

Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of the rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as apposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to be statutory, the recited process must somehow apply, involve, use or advance the technological arts.

In the present case, claims 1-28 only recite an abstract idea. The recited steps of presenting a visual presentation, determining interest and interviewing a prospective representative does not apply, involve, use or advance the technological arts since all of the recited steps may be performed manually with or without the aid of any technology.

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Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process. In the present case, nominal use of the Internet does not confer statutory subject matter

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, presenting a presentation, determining interest, interviewing the prospective representative and submitting results produces a useful, concrete and tangible result.

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 1 is deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Quixtar, using the Business Compendium information dated January 2000.

As per **claim 1**, Quixtar teaches presenting a visual presentation to the prospective representative on a web site of the owner (page c-5, item 5 and 6 – present product information to prospective reps; d-1 – present the independent business owners (IBO) plan); determining that

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the prospective representative has interest in becoming a representative of the business such that the owner is able to interact with the interested prospective representative (page d-1, item 5 – upon determining interest, set up meetings with interested people); performing an interview with the prospective representative (page d-2 – during presentation, ask questions and present the independent business owner plan); and submitting results of the interview with the prospective representative to the owner (page d-2 – the results of the interview are used by the owner to determine interest). Quixtar does not explicitly teach the use of a web site for the presentation and online interview, however, it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include presenting the visual presentation and interviewing over the Internet; because of the well known benefits of using the Internet to allow one to reach prospective representatives all over the world.

As per **claim 2**, Quixtar teaches presenting a presentation further comprises an act of the prospective representative accessing a web site of the owner, wherein the visual presentation is stored on the web site of the owner (page f-37 – part of the business-building training and support materials are Internet websites and online literature).

As per **claim 3**, Quixtar teaches presenting a visual presentation further comprises an act of evoking wistful regret in the prospective representative through an emotion portion of the visual presentation. In light of the rejections under 112 and 101, Examiner rejects claim 3 using page d-2 wherein the presentation questions whether they have dreams or goals; page d-1 talks about the prospective representatives not being happy with their current situation (emotion

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portion). These are construed to evoke some sort of regret in the prospective representative since there is questioning of their current situation.

As per **claim 4**, Quixtar teaches presenting a visual presentation further comprises an act of providing factual data to the prospective representative through a factual portion of the visual presentation, wherein the factual data is provided after the emotion portion (page d-2 after questioning dreams and goals, facts about the business plan, product line and benefits program are presented).

As per **claim 5**, Quixtar teaches determining that the prospective representative has interest further comprises an act of requiring the prospective representative to commit to the interview (page d-1 – d-2 once there is interest from a prospective representative, the prospective representative commits to a meeting to discuss the business plan). Quixtar does not however teach using an online interview. However it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include interviewing over the Internet; because of the well-known benefits of using the Internet to allow one to reach prospective representatives all over the world.

As per **claim 6**, Quixtar teaches the act of determining that the prospective representative has interest further comprises an act of inviting the prospective representative to return at a later date when the prospective representative does not have sufficient interest (page d-2 if the prospective representative isn't sure about the opportunity, follow up with them within 24 to 48 hours).

As per **claim 7**, Quixtar teaches the owner conducting a personal interview with the prospective representative. Quixtar does not however teach using an online interview prior to



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the personal interview. However it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include interviewing over the Internet; because of the well-known benefits of using the Internet to allow one to reach prospective representatives all over the world. It is also old and well known to use an online interview as a screening tool to collect general information about prospectives and follow up with a personal interview since it is well known that a personal interview is more effective since the interviewer actually gets to meet with the prospective and a conversation can take place that is tailored to the questions asked by both the prospective and the interviewer.

As per **claim 8**, Quixtar teaches interviewing the prospective representative (page d-2) but does not teach the personal interview expanding on the results of the online interview. However it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include interviewing over the Internet; because of the well-known benefits of using the Internet to allow one to reach prospective representatives all over the world. It is also old and well known to use an online interview as a screening tool to collect general information about prospectives and follow up with a personal interview since it is well known that a personal interview is more effective since the interviewer actually gets to meet with the prospective and a conversation can take place that is tailored to the questions asked by both the prospective and the interviewer.

As per **claim 9**, Quixtar teaches the personal interview is conducted over a telephone (page d-2 – follow up is encouraged, inherently this follow up could be conducted over a

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telephone wherein the business owner conducts another interview to determine if the prospective has decided to pursue the opportunity).

As per **claim 10**, Quixtar teaches showing a visual presentation to the prospective representative, wherein the visual presentation includes an emotion portion and a factual portion (In light of the rejections under 112 and 101, Examiner rejects claim 10 using page d-2 wherein the presentation questions whether they have dreams or goals; page d-1 talks about the prospective representatives not being happy with their current situation (emotion portion). These are construed to evoke some sort of regret in the prospective representative since there is questioning of their current situation; page d-2 after questioning dreams and goals, facts about the business plan, product line and benefits program are presented); committing the prospective representative to an interview at the conclusion of the visual presentation, wherein the commitment evinces sufficient interest of the prospective representative (page d-2 after the presentation follow up with the prospective to interview to determine commitment); performing an interview with the prospective representative if the prospective representative commits to the interview (page d-2 after the presentation follow up with the prospective to interview to determine commitment); and sending results of the interview to the owner of the website. Quixtar does not explicitly teach the use of a web site for the presentation and online interview, however, it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include presenting the visual presentation and interviewing over the Internet; because of the well known benefits of using the Internet to allow one to reach prospective representatives all over the world.

As per **claim 11**, Quixtar teaches an act of directing the prospective representatives to the web site of the owner (page f-37 – support materials include online literature and Internet websites for the prospective to reference).

As per **claim 12**, Quixtar teaches a successful prospective representative receives a replica of a master web site that is essentially identical to the web site of the owner (page f-37 – each new independent business owner can purchase their own training and merchandising aids such as web sites and online literature).

As per **claim 13**, Quixtar teaches presenting a visual presentation further comprises an act of evoking wistful regret in the prospective representative. In light of the rejections under 112 and 101, Examiner rejects claim 13 using page d-2 wherein the presentation questions whether they have dreams or goals; page d-1 talks about the prospective representatives not being happy with their current situation (emotion portion). These are construed to evoke some sort of regret in the prospective representative since there is questioning of their current situation.

As per **claim 14**, Quixtar teaches the act of showing a visual presentation further comprises an act of providing hope to the prospective representative through the factual portion of the visual presentation. In light of the rejections under 112 and 101, claim 14 is rejection based on page d-2 - after questioning dreams and goals, facts about the business plan, product line and benefits program are presented, inherently in an attempt to provide hope, showing the prospective a better future).

As per **claim 15**, Quixtar teaches the visual representation is directed to an industry, wherein the industry is one of telecommunications, nutrition, and e-commerce (page c-1 – product categories include nutrition, telephone service and other e-commerce products).

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As per **claim 16**, Quixtar teaches the act of committing the prospective representative to an online interview further comprises an act of requiring the prospective representative to demonstrate sufficient interest (page d-1 – d-2 once there is interest from a prospective representative, the prospective representative commits to a meeting to discuss the business plan). Quixtar does not however teach using an online interview. However it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include interviewing over the Internet; because of the well-known benefits of using the Internet to allow one to reach prospective representatives all over the world.

As per **claim 17**, Quixtar teaches presenting information to prospective independent business owners then determining interest. It is determined if the prospective is ready to join or if a later date may be better. Given the well known benefits of automating the recruiting practice online, it would have been obvious to one of ordinary skill in the art at the time of the invention to recruit new independent Quixtar business owners over the internet as well as to include a prospective representative selecting a serious button on the web site to indicate sufficient interest and the prospective selecting a curious button on the web site to indicate insufficient interest, wherein the serious button and the curious button are provided to the prospective representative after the visual presentation. By automating the recruiting practice of Quixtar over the internet and including buttons for the prospective to push indicating seriousness or curiousness, this would advise the current Quixtar business owners of the interest of the prospective so they could follow up with the prospective at a later date if the prospective isn't ready to join. Otherwise the prospective who select serious would be registered as a new independent business owner with

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Quixtar. This feature of automating over the internet as well as including serious and curious buttons would make the process of selecting new independent business owners more efficient since the Quixtar representatives would know who to follow up with and who is ready to be registered as an independent business owner. As for automating this process over the internet it would be beneficial in that the current Quixtar independent business owners would be able to contact prospective business owners anywhere in the world.

As per **claim 18**, Quixtar teaches an act of the owner conducting a personal interview with the prospective representatives and wherein new prospective representatives commit to become new independent business owners, but does not explicitly teach wherein the personal interview is based on results of the online interview. However it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include interviewing over the Internet; because of the well-known benefits of using the Internet to allow one to reach prospective representatives all over the world. It is also old and well known to use an online interview as a screening tool to collect general information about a prospective candidate and follow up with a personal interview since it is well known that a personal interview is more effective since the interviewer actually gets to meet with the prospective and a conversation can take place that is tailored to the questions asked by both the prospective and the interviewer.

As per **claim 19**, Quixtar teaches the personal interview is conducted over a telephone (page d-2 – follow up is encouraged, inherently this follow up could be conducted over a telephone wherein the business owner conducts another interview to determine if the prospective has decided to pursue the opportunity).

As per **claim 20**, teaches a computer program have computer executable instructions for performing the acts recited in claim 10.

As per **claim 21**, Quixtar teaches a master web site, the master web site including a master presentation (page f-37 – online material is used to present information, each independent business owner can opt to purchase their own web sites and online literature from the independent business owner that recruited them); one or more replica web sites, wherein each replica web site has an owner and wherein each owner subscribes to the master web site, each replica web site comprising: a customized version of the master presentation; a commitment component for determining an interest of the prospects of the owner (page d-2 after the presentation follow up with the prospective to interview to determine commitment); and an online interview component for those prospects that demonstrate sufficient interest, wherein results of the online interview are sent to the owner (page d-2 after the presentation follow up with the prospective to interview to determine commitment); and a personal interview component for conducting a personal interview with prospects that demonstrate sufficient interest, wherein the personal interview is based on the results of the online interview (page d-2 after the presentation follow up with the prospective to interview to determine commitment). Quixtar does not explicitly teach the use of a web site for the presentation and online interview, however, it would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the manual process shown in Quixtar and modify it to include presenting the visual presentation and interviewing over the Internet; because of the well known benefits of using the Internet to allow one to reach prospective representatives all over the world.

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As per **claim 22**, Quixtar teaches the master presentation includes customized versions of a visual presentation (page f-37 – the business building and training information includes web sites and online literature).

As per **claim 23**, Quixtar teaches a telecommunications version of the visual presentation; a nutrition version of the visual presentation; and an electronic commerce of the visual presentation (page c-1 – product categories include nutrition, telephone service and other e-commerce products).

As per **claim 24**, Quixtar teaches the master web site further comprises resources for use by owners of the replica web sites (page f-37 – the business building and training information includes web sites and online literature).

As per **claim 25**, Quixtar teaches the resources include audio files and statistics (page f-37 – audio tapes are used for business building and training; page d-2 - part of the materials presented includes statistics such as average profits, earnings and sales figures and percentages).

As per **claim 26**, Quixtar teaches the customized version of the master presentation comprises an emotion portion for evoking wistful regret in the prospects and a factual portion to provide hope to the prospects (In light of the rejections under 112 and 101, Examiner rejects claim 10 using page d-2 wherein the presentation questions whether they have dreams or goals; page d-1 talks about the prospective representatives not being happy with their current situation (emotion portion). These are construed to evoke some sort of regret in the prospective representative since there is questioning of their current situation; page d-2 after questioning dreams and goals, facts about the business plan, product line and benefits program are presented).

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As per **claim 27**, Quixtar teaches the personal interview occurs over a telephone (page d-2 – follow up is encouraged, inherently this follow up could be conducted over a telephone wherein the business owner conducts another interview to determine if the prospective has decided to pursue the opportunity).

As per **claim 28**, Quixtar teaches successful prospects receive a new replica of the master web site, including a visual presentation substantially identical to a visual presentation of the replica web site of the owner (page f-37 – online material is used to present information, each independent business owner can opt to purchase their own web sites and online literature from the independent business owner that recruited them).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Intel Press Release, October 13, 2000. Quixtar's e-commerce site serves a growing network of independent distributors and business owners...

Lumpur, Kuala – Amway website

"Quixtar IBOs drive \$518 Million in Sales through Quixtar". – explains Quixtar

"HomeBiz4All.com is now offering services nationwide" – website identifies local home based business opportunities

"New Technology Helps On-line Job Seekers and Employers Really Click" – on-line recruiting with streaming video



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“Advantage Hiring’s New Web-Based Tools Address the Shortcomings of Online Recruiting” – online interviews and online tools for the interview process

“Nortel’s job fair a virtual success: Online recruiting station reaches audience in Boston” – online interviews and virtual job fairs.

US 6,385,620 – Kurzius et al. – system and method for the management of candidate recruiting information

US 6,381,592 – Reuning – candidate chaser

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R Stimpak whose telephone number is 571-272-6736.

The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS  
5/31/05



*Susanna Diaz*  
**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**

*AU 3623*